

### **REMARKS**

Applicant has carefully reviewed and considered the Office Action mailed on April 22, 2005, and the references cited therewith.

Claims 65, 69, 74, 78, 82, 86, and 90 have been amended, claims 79, 83, and 84 have been canceled, and no claims have been added. Claims 65-78, 80-82, and 85-91 are now pending in this application.

#### **Interview Summary**

Applicant thanks the Examiner for the telephone conversation with Edward J. Brooks III ("Jay" Brooks) on May 4, 2005. During that conversation, Applicant and Examiner discussed the application of the Vesely and Clark references to the present claims. Points were considered for differentiating the claims from the Vesely and Clark references.

#### **Double Patenting Rejection**

Claims 65-91 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-28 of U.S. Patent No. 6,715,503. U.S. Patent No. 6,715,503 and this application are commonly owned by Applicant. As part of this Response, Applicant submits a terminal disclaimer. Applicant respectfully requests that the examiner withdraw the nonstatutory double-patenting rejection for claims 65-91.

#### **§102 Rejection of the Claims**

Claims 65, 69, 73, 74, 77, 78, 82 and 90 were rejected under 35 USC 102 as being anticipated by Vesely (U.S. Patent No. 2,347,443). Vesely "relates to improvements in gun mountings." (Vesely, Page 1, Column 1, Lines 1-2.) Vesely appears to describe "a carrying member adapted to carry [a] post for supporting [a] gun." (Vesely, Page 1, Column 1, Lines 18-19.) However, Vesely does not describe a post with an upper end or region that includes an opening suitable to receive the upper portion of an umbrella or umbrella top.

In contrast, Applicant's independent claims 65, 69, 74, 78, 82, and 90, as amended, each recite a post with an upper end or region that includes an opening suitable to receive the upper portion of an umbrella or umbrella top.

Vesely also appears to describe a "tubular carrying member [which] carries a sleeve . . . for two handles." (Vesely, Page 1, Column 2, Lines 14-16.) However, Vesely does not describe a post with attached handles, spaced apart or separated by a distance along the post, that can be locked in a position perpendicular to a length of the post to receive a downward force applied to the handles to facilitate insertion of the lower end or region of the post into the ground.

In contrast, Applicant's independent claims 65, 69, 74, 78, 82, and 90, as amended, each recite a post with attached handles, spaced apart or separated by a distance along the post, that can be locked in a position perpendicular to a length of the post to receive a downward force applied to the handles to facilitate insertion of the lower end or region of the post into the ground. Thus, Vesely does not include each and every element of independent claim 65, 69, 74, 78, 82, or 90 or dependent claims 73 or 77. As such, Applicant respectfully requests reconsideration and withdrawal of the 102 rejection based on Vesely for these claims, as well as those claims which depend therefrom.

Claims 65-86 and 89-91 were rejected under 35 USC 102 as being anticipated by Clark (U.S. Patent No. 2,347,443). Clark "relates to folding outdoor seats." (Clark, Column 1, Line 4.) Clark appears to describe an "upper end of [a] main shaft [with] a folding seat unit . . . which is partially inserted into the upper end of [the] main shaft." (Clark, Column 6, Lines 19-23.) However, Clark does not describe a post with an upper end or region that includes an opening suitable to receive the upper portion of an umbrella or umbrella top.

In contrast, Applicant's independent claims 65, 69, 74, 78, 82, 86, and 90, as amended, each recite a post with an upper end or region that includes an opening suitable to receive the upper portion of an umbrella or umbrella top.

Clark also appears to describe "stabilizer feet [that] when extended perpendicular to [a] main shaft . . . form a large stable base." (Clark, Column 7, Lines 59-61). However, Clark does not describe a post with attached handles,

spaced apart or separated by a distance along the post, that can be locked in a position perpendicular to a length of the post to receive a downward force applied to the handles to facilitate insertion of the lower end or region of the post into the ground.

In contrast, Applicant's independent claims 65, 69, 74, 78, 82, 86, and 90, as amended, each recite a post with attached handles, spaced apart or separated by a distance along the post, that can be locked in a position perpendicular to a length of the post to receive a downward force applied to the handles to facilitate insertion of the lower end or region of the post into the ground.

Applicant respectfully submits that Clark does not include each and every element of independent claims 65, 69, 74, 78, 82, 86, and 90, as amended. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the 102 rejection based on Clark for these claims, as well as those claims which depend therefrom.

#### §103 Rejection of the Claims

Claim 88 was rejected under 35 USC 103 as being unpatentable over Clark (U.S. Patent No. 5,470,038). For the reason provided in connection with claim 86, Applicant believes that claim 86 is in condition for allowance. That is, Clark does not teach or suggest a post with an upper end or region that includes an opening suitable to receive the upper portion of an umbrella or umbrella top. Clark also does not teach or suggest handles, spaced apart or separated by a distance along the post, that can be locked in a position perpendicular to a length of a post to receive a downward force applied to the handles to facilitate insertion of the lower end or region of the post into the ground. As such, Applicant respectfully requests withdrawal of the 103 rejection for claim 88.

**CONCLUSION**

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 236-0120 to facilitate prosecution of this matter.

**CERTIFICATE UNDER 37 CFR §1.8:** The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: **MS AMENDMENT** Commissioner of Patents, P.O. BOX 1450, Alexandria, VA 22313-1450 on this 13<sup>th</sup> day of May, 2005.

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